Who Owns Your Customer Database?

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The Business of Golf – What Are You Thinking?

You might think that the title poses a simple question. And most golf course owners would quickly answer, "I do our customer database. Why would you think otherwise?"

Actually, if you use a third-party organization to operate your golf course or your food and beverage concession, depending on whether the contractual relationship is a management agreement or a lease, the ownership of the customer database and the associated transaction data is determined by the principles of the "law of agency."

Simply stated, whoever "owns the economics" is entitled to ownership of the customer database.

While the concept is simple, the ramifications to the "title holder" of the golf course are complex and may surprise you.

The Legal Dilemma

This issue recently came to the forefront as Golf Convergence began to undertake a customer survey as a component to crafting a strategic plan for a client that had "leased" its facility to a management company.

A standard task for this type of engagement is a golfer survey.

Because the contract with the municipality contained confidentiality provisions regarding release of financial and customer data, we naively thought that we would be able to obtain a copy of the email list from the management company to undertake the survey. All of the golfers had opted-in to be contacted. Naturally, we

knew our ability to use the email list would be restricted to use for the survey only, and all names would be deleted upon completion of such.

Our request for a copy of the email list was met with the following response from the management company:

> "No, we can't provide you that list. It is our intellectual property. We may be able to launch an email on your behalf depending on the advice of counsel."

That message came with the following explanation:

> "Our concerns may seem silly to outside observers, however, as a national company … and with several hundred thousand customer e-mail addresses, we have extensive experience in matters related to privacy challenges and SPAM controls. We have to take this very seriously and be thorough in the process.
>
> Our legal department has reached out to our outside counsel. They are developing parameters that will ensure Golf Convergence can follow-up with customers. Please bear with us, privacy challenges to the use of e-mail databases is a budding area of litigation and I'm trying to find an acceptable solution that will ensure feedback and effectively and openly address any potential customer concerns."

Interestingly, the contract with the municipality and the management company was originated prior to the invention of email addresses, and the contract is silent as to the ownership of the intellectual property and the course's intangible assets.

Ultimately, the management was supportive and launched the email survey campaign. However, there were some short-term unintended consequences that have long-term implications for the golf industry.

The short-term impact was the efficacy of the survey was weakened. The size of the client's email database could not be revealed to us. The open rate, click-through rate, and the ability to send targeted second emails to those categories were restricted. The ability to achieve a statistically valid survey, not knowing the size of the customer database, was limited. As a result, the ability to effectively measure the operational efficiency of the management company was hampered.

But there is a far more important consequence.

Who Owns the Economics?

Management companies believe that the individual who "owns the economics" of the course is rightly the owner of the customer database – not by default the golf course owner.

It is the belief of management companies we polled for this article that if the contractual agreement is a "management agreement," the golf course and the management company have a joint and equal interest in the customer database. If the contractual agreement is a "lease," the management companies believe that the customer database is the management company's sole intellectual property.

Their belief is firmly rooted. To illustrate, we were informed by a management company that they unfortunately had to decline the request of a municipality to email a 4th of July announcement to the golfer database. It was the management company's belief that the golfers opted-in merely for golf-related information and to contact them for any other purpose would be a violation of that implicit agreement with the golfers.

This has severe negative ramifications for golf course owners. Upon the termination of a "management contract," does the management company have the right to use the golf course's customer information? To the extent that each party had a "joint and equal interest in the database," the answer would likely be "yes." In theory, the management company could then use its former client's customer database to compete against its former client if the management company represented another golf course in the local market. Unethical – yes; possible – yes; legally restricted – maybe not; especially if the rights to the intellectual property were undefined within the contract.

If the contract was a lease, even more dire consequences will result. The golf course owner is left with no information regarding its golfers' playing frequency and spending habits. The owner would lack any demographic information regarding the course's customers and be unable to contact them via email. In essence, the golf course owner would be placed at serious disadvantage in continuing to operate the golf course, whether through internal management or the retention of another firm.

We know of concessionaires who have procured a web site address for a golf course and who declined to transfer the ownership of the URL upon termination of their agreement.

In essence, if the ownership of the intellectual property is not defined in a lease agreement, the golf course owner effectively becomes the indentured servant of the management company. The golf course owner is unlikely to be able to afford the economic loss from terminating the contract and having to create a customer database from scratch.

What About Third-Party Tee Time Firms?

One of the brouhahas used as an argument against third-party tee time parties concerns this issue about who owns the customer email addresses.

It is the feeling among tee time providers that if they create a new customer database for a golf course through their own marketing efforts, their only obligation is to provide the golf course the golfers' names and credit card information – not their email addresses. This policy frustrates many golf course owners.

Who is right? In this case, we side with the third-party management company. The golfers only agreed to provide their email addresses to complete a commercial transaction with the third party and did not explicitly approve its redistribution to the golf course. Would you want your email address provided to United Airlines and Starwood Hotels if you booked your flight and hotel on Expedia or Orbitz? Probably not.

It is our opinion that it is incumbent on the golf course owner to identify such customers and to train the staff to obtain the email address of each customer upon check-in. To the extent that the golf course fails to implement appropriate procedures to capture such data, frankly, it is the golf course owner's fault, whether due to lack of business acumen or due to laziness. Technology exists that renders this a simple and quick process. There is no excuse for not getting the customers' email addresses. Golf course owners should bear the risk and the blame of the resulting economic loss

What Should the Golf Course Owner Do?

A course owner who enters into a management agreement does so solely to optimize the investment return from the operation of that facility, while recognizing his or her own organizational strengths and weaknesses. Management agreements provide a third party the opportunity, through that firm's expertise, to profit – but that should not be at the long-term expense or detriment of the owner. The golf course owner hopes the relationship is mutually beneficial.

The unintended consequence of the evolution of technology is that a golf course owner may be placing his course at a significant disadvantage by using a third-party management company unless the ownership of the intellectual property is precisely defined.

We believe that the golf course owner has a unilateral ownership of not only tangible assets, such as the course, the clubhouse, etc., but also the intellectual property and intangible assets, such as customer database information, brand image, etc.

Each golf course owner would be well-served to retain legal counsel for guidance in addressing the ownership of intellectual property prior to entering into any management agreement.

Management companies serve a vital role in the golf course industry. They bring a sophistication and professional management that is beyond the grasp of many golf course owners. However, we believe that their interests and those of the golf course owners should be mutually aligned both during the time the contract is in force and upon its termination.